IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

OP.No. 16861 of 1999(G)

PETITIONER:

K.M.SULAIMAN KUNJU,
PRINCIPAL,
S I C A,
THIRUVANANTHAPURAM.

BY ADV. SRI.M.P.MOHAMMED ASLAM
SRI.P.M.KUNJIMOIDEENKUTTY

RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY,
   DEPARTMENT OF HOME,
   GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE ADDITIONAL DIRECTOR GENERAL OF POLICE (PRISONS)**
   PRISONS HEAD QUARTERS,
   THIRUVANANTHAPURAM.

3. **PRINCIPAL SECRETARY, HOME DEPARTMENT,**
   GOVERNMENT OF KERALA,
   THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.SANDESH RAJA FOR R1 TO R3

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO.16861/1999

ORDER ON C.M.P. NO.27532 OF 1999 IN OP NO.16861 OF 1999

DISMISSED

28/02/2007 **SD/-**
ANTONY DOMINIC, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE PHOTOCOPY OF PROVISIONAL SENIORITY LIST OF OFFICERS in the CADRE OF SUPERINTENDENTS OF CENTRAL PRISONS AND EQUATED CATEGORIES AS ON 1.1.98 DATED 15.7.1998.

EXT.P2: TRUE COPY OF LETTER NO.D3.892/93 DT.22.3.93.

EXT.P3: TRUE COPY OF JUDGMENT IN OP 809/97 U DTD. 12.2.97 OF THIS HON'BLE COURT.

EXT.P4: TRUE COPY OF MEMO NO.101/98 DT.21.7.98.

EXT.P5: TRUE COPY OF EXPLANATION SUBMITTED BY THE PETITIONER DTD. 28.7.98.

EXT.P6: TRUE COPY OF CHARGE MEMO NO.58849/B3/97/HOME; HOME BD DT.27.9.98.

EXT.P7: TRUE COPY OF REPLY DATED 3.11.98 SUBMITTED BY THE PETITIONER.

EXT.P8: TRUE COPY OF ORDER NO.1667/99/HOME, THIRUVANANTHAPURAM DTD. 3.5.99.

EXT.P9: TRUE COPY OF NOTIFICATION NO.7846/B3/98/HOME DTD. 21.11.98.

//TRUE COPY//

ANTONY DOMINIC, J.

O.P NO. 16861 OF 1999

Dated this the 28th day of February, 2007

J U D G M E N T

This writ petition has been filed praying for quashing Exhibits P4, P6 and P8. By Ext.P8, punishment of barring of two increments without cumulative effect was imposed on the petitioner, who was the Superintendent of the Central Prison, Viyyoor and later Additional Inspector General. From the facts as disclosed in the pleadings, it would appear that based on certain complaints received by the Government, Additional Director General of Police (Prisons) conducted an enquiry into the allegations against the petitioner and submitted report dated 26/8/98 to the Government. It was reported that certain items of furniture mentioned in the report were missing from the Central Prison, Viyyoor rejecting the contention of the petitioner that the furnitures which were removed by him were his personal properties. In the report, it was concluded that the missing items of furniture were removed from the premises of the prison by the

petitioner himself. On this basis, departmental action was recommended against him for his indecent conduct, most unbecoming of a senior officer of the Department.

2. Following the receipt of enquiry report mentioned above, Ext.P6 memo of charges dated 27/9/98 was issued to the petitioner proposing to take action against the petitioner under the provisions of the Kerala Civil Services (Classification, Control & Appeal) Rules 1960. To the allegations that were thus levelled against him, petitioner is seen to have given Ext.P7 reply. In the reply so furnished by the petitioner, he has dealt with each of the charges that were levelled against him and the reliability of the evidence that was collected by the Enquiry Officer and the personal malafides of the people who have deposed to the Enquiry officer during the course of the enquiry conducted. He has also explained how the findings of the Enquiry Officer are inconsistent with the evidence available. It was thereafter Ext.P8 order was issued by the first respondent imposing the penalty of barring of increments without cumulative effect as noted above.

3. A reading of Ext.P8 order issued by the first

respondent would show that the first respondent has referred to the report of the Enquiry Officer, the memo of charges and Ext.P7 explanation submitted by the petitioner. However, the order does not disclose that any one of the contentions raised by the petitioner in Ext.P7 has been considered by the Government while imposing the punishment. All that they have said in Ext.P8 is that they have considered the explanation submitted by the petitioner.

4. In my view, an explanation submitted to a memo of charges cannot be rejected in the manner it has been done. On the other hand, a disciplinary authority, while imposing punishment is expected to deal with the contentions. After examining the contentions of the delinquent, though he is free to reject the same, the reasons thereof are also to be stated. This alone will satisfy the requirements of law. The order does not disclose such a consideration nor does the file disclose the same.

5. In such circumstances, Ext.P8 order has to be held as one issued by the disciplinary authority without adverting to the contentions raised by the petitioner in his explanation and for

that reason, Ext.P8 cannot be sustained. In the result, Ext.P8 order is quashed and the first respondent is directed to reconsider the matter adverting to the contentions raised by the petitioner in Ext.P7 and decide the matter afresh. Taking into account the fact that the petitioner has already retired from service, first respondent is directed to complete the proceedings within a period of three months from the date of receipt of a copy of this judgment.

Original petition is disposed as above. No costs.

ANTONY DOMINIC, JUDGE

Rp